

FCC MAIL SECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

JUL 6 4 11 PM '94

DISPATCHED BY MM Docket No. 94-61 ✓

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Garberville and Hydesville,
California)

RM-8464

NOTICE OF PROPOSED RULE MAKING

Adopted: June 9, 1994;

Released: July 5, 1994

Comment Date: August 26, 1994

Reply Comment Date: September 12, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Brett E. Miller ("petitioner"), permittee of Station KWEO(FM), Channel 279C1, Garberville, California, requesting the reallocation of Channel 279C1 from Garberville to Hydesville, California, and the modification of its construction permit to specify Hydesville as its community of license. Petitioner states that it will apply for Channel 279C1 at Hydesville if reallocated, as requested.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's authorization to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Modification"), 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Petitioner states that the requested reallocation to Hydesville is mutually exclusive with the existing allotment of Channel 279C1 at Garberville. The distance between Garberville and the petitioner's specified site at Hydesville¹ is 51 kilometers (32 miles), whereas a distance

of 245 kilometers (152 miles) is required in this instance. Petitioner also states that Hydesville is listed in the 1990 U.S. Census as a census designated place and is attributed therein with a population 1,131 residents. In further support of its proposal, petitioner advises that the reallocation of Channel 279C1 from Garberville to Hydesville is in the public interest as it will not deprive Garberville of its sole local aural transmission service,² and will provide Hydesville with its first local aural transmission service. Petitioner's engineering statement also states that the reallocation would enable Station KWEO(FM) to increase its service area from 15,961 square kilometers containing 41,093 persons to an area of 16,784 square kilometers containing 111,153 persons.³

3. In further support of its proposal petitioner advises that its currently approved transmitter location at coordinates 40-07-13 and 123-41-32 (File No. BMPH-930827IE), is in very close proximity to a State Department of Forestry ("Forestry") fire lookout tower, which in the past has been a source of controversy regarding the effects of radiofrequency radiation from other facilities at the site. As a result, petitioner advises that its construction permit authorization precludes the automatic program test provisions of Section 73.1620. Rather, petitioner advises that a formal request for program test authority must be requested before such will be authorized, and must contain documentation to demonstrate acceptable radiofrequency radiation (RF) levels at the Forestry's fire lookout tower site. Petitioner advises that its engineering studies have been unable to remove uncertainty that the proposed construction of Station KWEO(FM)'s transmitter at the fire lookout tower site would result in acceptable RF field strengths. Petitioner advocates that the instant proposal would resolve the technical problems associated with its currently authorized site since it has obtained certification for an established tower site that is devoid of RF concerns.

4. We believe the public interest would be served by proposing the reallocation of Channel 279C1 from Garberville to Hydesville, California, since it could provide the latter community with its first local aural transmission service and would enable Station KWEO(FM) to increase its service area. However, as petitioner proposes to relocate its transmitter site to accommodate its proposal, it will result in areas that will lose existing reception service. Therefore, although petitioner provided information in its proposal concerning the areas and populations which will receive a new service, it is requested also to provide information concerning the areas and populations which will lose existing service if Channel 279C1 is reallocated to Hydesville.⁴ The study should also reveal the total reception service that is now available within the gain and loss areas.⁵

¹ Coordinates specified by the petitioner for a transmitter site at Hydesville are 40-23-00 North Latitude and 124-11-00 West Longitude. Coordinates at the authorized site for Station KWEO(FM) at Garberville are 40-07-13 North Latitude and 123-41-32 West Longitude.

² Garberville is also served by Station KBEY(FM), Channel 284C, as well as noncommercial educational Station KMUD(FM), Channel 216C3.

³ The engineering statement also advises that although some of the areas contained within the present and predicted 60 dBu contours of Station KWEO(FM) lie over the Pacific Ocean, no adjustments were made for that in the stated contour-encompassed areas.

⁴ As the Commission has previously stated: "The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both." See *Modification, supra*, at 5 FCC Rcd 7097.

⁵ Reception services are those aural broadcast services that can be received within a given geographical area, including full-time AM and FM commercial stations. In determining reception service provided by an FM station, the area of service circumscribed by the station's 1.0 mV/m signal contour should be considered, assuming maximum facilities for the class of station

5. The petitioner's modification request at Hydesville is consistent with the provisions of Section 1.420(g) and (i) of the Commission's Rules. Therefore, we shall propose to modify the construction permit for Station KWEO(FM) without entertaining competing expressions of interest in the use of Channel 279C1 at Hydesville, or requiring the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

6. Channel 279C1 can be allotted to Hydesville, California, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's specified site, located 19.7 kilometers (12.2 miles) south of the community.

7. In view of the above, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
Garberville,		
California	279C1, 284C	284C
Hydesville, California	--	279C1

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **August 26, 1994**, and reply comments on or before **September 12, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

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Moorpark, CA 93021

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

except Class C. For Class C stations, the licensed facilities or the minimum Class C facilities, whichever is greater, should be considered. The area of reception for full-time AM stations is defined according to whether it is a Class A AM station or another class of full-time AM station. For a Class A station, called a clear channel station, the reception area is defined by a station's 0.5 mV/m groundwave contour, based on its licensed facilities. For allocation purposes, all other classes of full-time AM stations, reception service is defined as that service received

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

within a station's *nighttime* interference-free contour. For purposes of determining the availability of aural services in the areas affected by a change of community proposal, a petitioner should include in its study reception services provided by all relevant AM and FM stations. Reception areas that receive at least five radio services are considered to be well-served. Accordingly, within a given reception area, any count of radio services beyond five is unnecessary.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.